

Message Text

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PAGE 01 TRIPOL 00896 121125Z
ACTION COME-00

INFO OCT-01 NEA-10 ISO-00 EB-07 /018 W
-----018556 121546Z /42
R 121021Z JUL 77
FM AMEMBASSY TRIPOLI
TO SECSTATE WASHDC 4546

UNCLAS TRIPOLI 0896

E.O. 11652: N/A
TAGS: BENC, BGEN, LY
SUBJ: CONTRACTING RULES, PRACTICES, & BARGAINING TECHNIQUES IN
LIBYA

REF: 76 STATE A-5955

FOLLOWING RESPONSES KEYED TO QUESTIONS REF AIRGRAM:

1. THE GOVERNMENT ALMOST ALWAYS INSISTS ON FIXED PRICE -
USUALLY C & F.
 - A. A CONDITION OF CONTRACT OFFERS USUALLY STATES "SUBJECT TO
PRICE ESCALATION AT TIME OF SIGNING CONTRACT OR OPENING LETTER
OF CREDIT", OR PRICE IS GOOD FOR A CERTAIN PERIOD OF TIME ONLY.
WE KNOW OF NO INSTANCES IN WHICH ESCALATION CLAUSES HAVE BEEN
NEGOTIATED.
 - B. COST PLUS CONTRACTS ARE VERY RARE.
 - C. ON COMMODITY PRODUCTION FOR THE GOVERNMENT SUCH AS WHEAT, ETC.,
THE GOVERNMENT MAY ELECT TO FIX A PRICE AT WHICH IT WILL BUY FROM
THE PRODUCER FOR A SPECIFIED NUMBER OF YEARS TO ACT AS AN INCEN-
TIVE FOR PRODUCTION BONUS.
 - D. DEMURRAGE CAN BEST BE HANDLED BY QUOTING C & F ANCHORAGE LIBYAN
PORT. OTHERWISE, IF PRICE IS C & F LIBYAN PORT IT MAY BE THAT DE-
MURRAGE WILL BE TO THE ACCOUNT OF THE SELLER. F.I.O.S. CONTRACTS
CAN ALSO BE NEGOTIATED TO ELIMINATE DEMURRAGE.
 - E. PARTS SUPPLY CONTRACTS CAN BE WRITTEN SUBJECT TO CURRENT PRICE
LISTS, F.O.B. U.S. PORT ETC.

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- F. YES. RATHER SMALL PRIVATE SECTOR IS MORE FLEXIBLE AND
NEGOTIATIONS ARE EASIER FOR SUPPLY CONTRACTS AND PAYMENTS.

2. A. BID BONDS VARY FROM 1 TO 5 PERCENT AND ARE SUBMITTED WITH
BIDS AS A PERCENT OF TOTAL BID, USUALLY IN THE FORM OF CERTIFIED
CHECK. BID BONDS ARE USUALLY RETURNED TO UNSUCCESSFUL BIDDERS
WITHIN 30/60 DAYS OF BID OPENING.

B. BID BONDS ARE RATHER UNIFORM IN PERCENTAGE AMOUNTS AND ARE PUBLISHED FOR THE BID.

C. PERFORMANCE BONDS ARE FIXED AS A PERCENTAGE OF THE TOTAL CONTRACT AND VALID USUALLY FOR ONE YEAR AFTER HANDOVER OF EQUIPMENT OR PROJECT. AMOUNTS RANGE BETWEEN 10 PERCENT ON SMALL PROJECTS AND 20 PERCENT ON LARGE PROJECTS. PERFORMANCE BONDS ARE UNCONDITIONAL BANK GUARANTEES FOR A FOREIGN BANK TO THE LIBYAN BANK FOR FIXED AMOUNT AND VALID FOR A SPECIFIED PERIOD OF TIME. THE LIBYAN BANK IN TURN ISSUES A COUNTER-GUARANTEE TO THE LIBYAN BUYER OR PROJECT FOR THE SAME AMOUNT IN DINARS VALID FOR A SPECIFIC TIME UNCONDITIONALLY. SURETY BONDS ARE NOT ACCEPTABLE.

3. FORCE MAJEURE IS DEFINED AS SPECIFIED IN THE INTERNATIONAL RULES OF ARBITRATION. LABOR DISPUTES AND PORT CONGESTION ARE GROUNDS FOR FORCE MAJEURE. THE LANGUAGE OF FORCE MAJEURE IS SOMETIMES NEGOTIABLE IN SMALL DEGREES.

4. TRAINING IS A NECESSARY ITEM AND IS PART OF THE CONTRACT COSTS TO THE BUYER. TRAINING EQUIPMENT CAN BE IMPORTED ON A TEMPORARY BASIS AND EXPORTED AGAIN WITH PROPER DOCUMENTS.

5. CONTRACTOR IS EXPECTED TO HIRE AND TO TRAIN LOCAL LABOR. HOWEVER FOR THE SAKE OF PROJECT COMPLETION AND MAINTENANCE THE CONTRACTOR SHOULD STRIKE A GOOD BALANCE OF EXPATRIATES AT LOCALE. LABOR MUCH LOWER IN PRODUCTIVITY THAN SIMILAR IN US. EGYPT, TUNISIA, TURKEY AND EAST EUROPE ARE MAJOR SOURCES OF LOCAL LABOR.
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THERE ARE SEVERE SHORTAGES OF LABOR IN ALL CATEGORIES. MECHANICS RECEIVE ABOUT LD 150 PER MONTH PLUS FOOD AND ACCOMMODATION; BRICKLAYERS APPROX. LD 95 PLUS FOOD AND LODGING. HOUSING IS TIGHT IN THE CITIES. FOOD AND MEDICAL CARE AND NECESSITIES ARE AVAILABLE. IN FIELD CAMP SITUATIONS THE CONTRACTOR IS EXPECTED TO SUPPLY THE TOTAL NEEDS OF THE CAMP AND ITS PERSONNEL. EMPLOYEES ARE SUBJECT TO LOCAL INCOME TAXES AND CONTRACTORS SHOULD HIRE A CONSULTANT ON COMPLEX LOCAL LAWS, TAXES, WORK AND RESIDENCE PERMITS.

6. ARBITRATION: LOCAL OR INTERNATIONAL ARBITRATION BOARDS CAN BE USED. SOME CONTRACTS SPECIFY PARIS AS THE NEUTRAL ARBITRATION CENTER. SOME CONTRACTS SIMPLY DO ARBITRATION BY A "JUDGE" OR "BOARD" MUTUALLY AGREED UPON BY THE ARBITRATING PARTIES. EXPERIENCE OF FOREIGN CONTRACTORS ON ARBITRATION GENERALLY BAD.

7. LOCAL AGENTS AND REPRESENTATIVES ARE OPERATING ALTHOUGH THEIR LEGAL STATUS IS NOT CLEAR? THEY ARE, HOWEVER, VERY NECESSARY. THEY ADVISE ON BUSINESS PRACTICES, SET UP MEETINGS AND ASSIST IN CONTRACT ADMINISTRATION. NORMAL COMMISSIONS OR FEES RANGE FROM 5 TO 10 PERCENT OF CONTRACT TOTAL.

8. USUALLY LOCAL PARTNERSHIPS ARE 51 PERCENT LOCAL AND 49 PERCENT FOREIGN. IT WOULD NOT BE ADVISABLE TO TRY TO OPERATE AS A WHOLLY OWNED FOREIGN COMPANY BECAUSE OF TAX AND BUSINESS LIABILITIES.

9. ADVANCE PAYMENTS ARE USUALLY MADE ONLY AFTER A LETTER OF GUARANTEE FOR THE SAME AMOUNT AND VALID UNTIL FULFILLMENT OF DELIVERY OR WORK CONDITIONS AT A SPECIFIC TIME HAS BEEN PLACED WITH THE PURCHASER ISSUING THE LETTER OF CREDIT OR ORDER. SUPPLY CONTRACTS VARY FROM 10 TO 20 PERCENT ADVANCE PAYMENT. WORK CONTRACTS ARE USUALLY LIMITED TO 10 PERCENT.

10. MOST LOCAL PRODUCTS ARE IN SHORT SUPPLY, AND SUCH SUPPLY NOT USUALLY REQUESTED. IT IS A PART OF THE OVERALL CONTRACT. ESCALATION CLAUSES, BONDS, FORCE MAJEURE CLAUSES, ETC., APPLY AS OUTLINED ABOVE.
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11. BONDED AREAS RARELY ARRANGED - BUT IT IS POSSIBLE.

12. BIDS WILL USUALLY BE IN ARABIC, BUT SOMETIMES IN ENGLISH.
METRIC SYSTEM IS USED.

13. CONTRACTORS ARE LIABLE FOR ALL LOCAL TAXES ON PROFIT
AND INCOME. TAXES DO NOT VARY.

14. IT IS SOMETIMES POSSIBLE TO OBTAIN WAIVERS OF CUSTOMS. MOST MACHINERY AND EQUIPMENT NEED NOT BE RE-EXPORTED. THERE IS A LOCAL MARKET FOR MOST TYPES OF MACHINERY IN GOOD CONDITION. THERE ARE PENALTIES FOR ABANDONMENT, NOT ALWAYS ENFORCED. NO MANDATORY FORMULA REGULATING SUPPLY SPARE PARTS.

15. PAYMENT TERMS, DELIVERY TERMS AND PRICE ARE NEGOTIABLE. MOST OTHER CONTRACT PROVISIONS ARE USUALLY, BUT NOT ALWAYS, NON-NEGOTIABLE.
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Message Attributes

Automatic Decaptioning: X
Capture Date: 01-Jan-1994 12:00:00 am
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: n/a
Control Number: n/a
Copy: SINGLE
Sent Date: 12-Jul-1977 12:00:00 am
Decaption Date: 01-Jan-1960 12:00:00 am
Decaption Note:
Disposition Action: n/a
Disposition Approved on Date:
Disposition Case Number: n/a
Disposition Comment:
Disposition Date: 01-Jan-1960 12:00:00 am
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
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Document Source: CORE
Document Unique ID: 00
Drafter: n/a
Enclosure: n/a
Executive Order: N/A
Errors: N/A
Expiration:
Film Number: D770247-0714
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From: TRIPOLI
Handling Restrictions: n/a
Image Path:
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Legacy Key: link1977/newtext/t19770765/aaaacegj.tel
Line Count: 155
Litigation Code IDs:
Litigation Codes:
Litigation History:
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Office: ACTION COME
Original Classification: UNCLASSIFIED
Original Handling Restrictions: n/a
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: n/a
Previous Handling Restrictions: n/a
Reference: 76 STATE A-5955
Retention: 0
Review Action: RELEASED, APPROVED
Review Content Flags:
Review Date: 17-Dec-2004 12:00:00 am
Review Event:
Review Exemptions: n/a
Review Media Identifier:
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
SAS ID: 1883884
Secure: OPEN
Status: NATIVE
Subject: CONTRACTING RULES, PRACTICES, & BARGAINING TECHNIQUES IN LIBYA
TAGS: BENC, BGEN, LY
To: STATE
Type: TE
vdkgvwkey: odbc://SAS/SAS.dbo.SAS_Docs/8df1e66c-c288-dd11-92da-001cc4696bcc
Review Markings:
Margaret P. Grafeld
Declassified/Released
US Department of State
EO Systematic Review
22 May 2009
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 22 May 2009